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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

C. BROOKS CUTTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION
and DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

No. 1:09-cv-00107-LJO-DLB

**PARTIES' STIPULATION TO STAY
ACTION UNTIL DECEMBER 15, 2009,
AND RESET STATUS CONFERENCE;
PROPOSED ORDER**

Plaintiff, C. Brooks Cutter, and Defendants, the United States Food and Drug Administration ("FDA") and Department of Health and Human Services, through their attorneys, Lawrence G. Brown, United States Attorney, and Yoshinori H. T. Himel, Assistant United States Attorney, respectfully request that this Court enter a stay in the above-entitled action until December 15, 2009, and modify the schedule set forth in the Court's Order filed August 31, 2009.

In the previous "Parties' Stipulation to Modify Order of March 27, 2009, and Reset Status Conference," approved August 31, 2009, the parties agreed to extend the time permitted for the Plaintiff to challenge FDA's withholdings until September 22, 2009, to allow FDA time to address questions that had been raised regarding the original release. That stipulation noted that the FDA

1 was uncertain how long it would need to address the questions Plaintiff had raised concerning its
2 document production ending August 11, 2009.

3 The parties here show that there is good cause for a stay until December 15, 2009, to give
4 Defendants additional time to correct problems noted in the initial release of documents provided
5 to Plaintiffs on or before August 11, 2009. FDA has investigated the questions regarding the
6 original release and discovered several problems with the documents that were released to the
7 Plaintiff. Many of these problems were caused by a glitch in the software used by FDA to redact
8 documents. This software glitch led to more redaction than intended. FDA has agreed to correct
9 the released documents as expeditiously as possible, but it may take two months from October for
10 FDA to fix the problems and issue corrected copies of the redacted documents to the Plaintiff.

11 The parties agree that FDA will not prepare a Vaughn index of redacted information at
12 this time. The parties further agree that Plaintiff shall have until January 14, 2010, to decide
13 whether to challenge any of FDA's withholdings. If Plaintiff decides to challenge FDA's
14 withholdings, FDA agrees to produce a Vaughn index within thirty (30) calendar days after
15 Plaintiff gives defense counsel of record and FDA counsel a notice of his intent to challenge the
16 withholdings.

17 If the problems with FDA's release have not been resolved by December 15, 2009, and the
18 parties cannot reach a continued agreement for additional time for FDA to complete its work on
19 the Request, Defendants shall file a notice to that effect on or before January 22, 2010.

20 Based upon the foregoing, the parties move this Court to enter an order granting a
21 stay in this matter until December 15, 2009, consistent with the terms set forth in this stipulation,
22 and to continue the status conference set by Order filed August 31, 2009, from November 10,
23 2009, to February 9, 2010.

24
25 Dated: October 28, 2009

/s/ C. Brooks Cutter
C. BROOKS CUTTER

1 Dated: October 28, 2009

LAWRENCE G. BROWN
United States Attorney

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3 By: /s/ Y H T Himel
YOSHINORI H. T. HIMEL
Assistant U. S. Attorney

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5 Of Counsel:

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12 5600 Fishers Lane
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13

14
15 ORDER

16 Good cause appearing, the action is STAYED until December 15, 2009. The status
17 conference presently set for 9:30 a.m. on November 10, 2009, is CONTINUED until 9:00 am, on
18 February 9, 2010, before Judge Beck.

19 IT IS SO ORDERED.

20 **Dated: November 2, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE